

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Appropriate Framework for Broadband)	CC Docket No. 02-33
Access to the Internet over Wireline Facilities)	
)	
Universal Service Obligations of Broadband)	
Providers)	
)	
Computer III Further Remand Proceedings:)	CC Dockets Nos. 95-20, 98-10
Bell Operating Company Provision of)	
Enhanced Services; 1998 Biennial Regulatory)	
Review – Review of Computer III and ONA)	
Safeguards and Requirements)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

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SUMMARY

OPASTCO urges the Commission to consider and account for the effects that changes to the regulatory framework for wireline broadband Internet access may have on rural ILECs and their customers. For many rural ILECs, the deployment of wireline broadband Internet access service would not be viable without pooling. The risk-sharing and cost-recovery attributes of pools are vital to many rural carriers' ability to provide affordable wireline broadband Internet access. If DSL-based services were excluded from the pooling process, many rural consumers of advanced wireline services would experience rate increases, while rural ILECs would become unable to recover the considerable costs of deployment. This would hinder the deployment of wireline broadband Internet access in many rural areas, contrary to the Commission's goals.

Further, the Commission must not forfeit its ability to support broadband Internet access service through universal service, should such support become appropriate in the future. Congress sought to ensure that consumers in rural areas receive access to advanced telecommunications and information services that are reasonably comparable to those provided in urban areas, and at reasonably comparable rates. The Commission must interpret the 1996 Act broadly and make certain that any changes in regulatory classifications do not dilute its authority to support the services necessary to achieve the universal service principals established in law.

The Commission should continue to permit all loop-related costs to be allocated entirely to voice telecommunications services. A reclassification of wireline broadband Internet access service would not change the fact, previously established by the

Commission, that there is little to no incremental loop cost incurred in the provision of DSL on a loop already in use for voice service. The continued allocation of all loop-related costs to ILECs' voice services would help to keep advanced services affordable for high-cost rural subscribers, consistent with Commission and Congressional goals.

Additionally, if the Commission determines that wireline broadband Internet access service is an "information service," it must ensure that any deregulatory benefits are not offset by new regulations from states. Given the predominantly interstate nature of Internet access services, state regulations should be avoided.

Even when rural carriers overcome obstacles and make broadband Internet access service available, consumer "take rates" tend to be low. In order to become widespread, advanced services must be attractive to consumers. Commission efforts to secure access to affordable video content for delivery via advanced services would help rural ILECs make the business case necessary to justify the considerable expenses associated with deployment.

The 1996 Act provided the Commission with permissive authority to require "other providers of interstate telecommunications" to contribute to the universal service fund. The Commission has previously recognized that facilities-based Internet access providers furnish telecommunications to themselves. Thus, the Commission has the legal authority to require all broadband Internet access providers to contribute.

Moreover, the public interest demands that the Commission exercise its authority over these providers. Internet substitution for traditional interstate telecommunications services is growing at a rapid pace, and the majority of this traffic is handled by providers that presently are not required to contribute to the fund. By broadening the base of

contributors to include all facilities-based broadband Internet access providers, the Commission would ensure a sustainable contribution base into the future.

Finally, equitable universal service contributions from all facilities-based broadband Internet access providers is necessary to comply with Section 254(d), as well as with the Commission's principle of competitive and technological neutrality. It is neither equitable, nondiscriminatory, nor competitively neutral to require only wireline telecommunications carriers to contribute on the basis of revenues earned from broadband transmission service. Customers should not be driven to one broadband provider or platform over another based upon a biased contribution policy.

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I. INTRODUCTION

The Organization for the Promotion and Advancement of Small
Telecommunications Companies (OPASTCO) files these comments in response to the
above-noted proceeding.¹ OPASTCO is a national trade association representing over
500 small telecommunications carriers serving rural areas of the United States. Its
members, which include both commercial companies and cooperatives, together serve
over 2.5 million customers. All OPASTCO members are rural telephone companies as
defined in 47 U.S.C. §153(37). Most OPASTCO member carriers are either presently

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33; *Universal Service Obligations of Broadband Providers*; *Computer III Further Remand Proceedings*; *Bell Operating Company Provision of Enhanced Services*; *1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, FCC 02-42 (rel. Feb. 15, 2002) (NPRM).

offering, or are preparing to offer, broadband or high-speed services to their customers. OPASTCO urges the Commission to account for the impact that any alterations to the regulatory framework for wireline broadband Internet access may have on rural carriers and their customers. OPASTCO also urges the Commission to require facilities-based broadband Internet access providers over all platforms to contribute equitably to universal service.

II. THE COMMISSION SHOULD CONSIDER, AND ACCOUNT FOR, THE EFFECTS THAT CHANGES TO THE REGULATORY FRAMEWORK OF WIRELINE BROADBAND INTERNET ACCESS MAY HAVE ON THE LONG-TERM ABILITY OF RURAL ILECS TO DEPLOY ADVANCED SERVICES

The NPRM seeks comment on the tentative conclusion that the provision of wireline broadband Internet access is an information service,² and whether issues raised in the Incumbent LEC Broadband Notice have an impact on the statutory classifications under consideration in this proceeding.³ Rural ILECs experience differing and unique circumstances that lead to different perspectives on the benefits and drawbacks of changing the regulatory framework for wireline broadband Internet access service. It is incumbent upon the Commission to account for these differing and unique circumstances as it moves forward with this proceeding. OPASTCO is gratified that the Commission has declared that its primary policy goal is “to encourage the ubiquitous availability of broadband to all Americans.”⁴ In order to promote this worthy goal, the Commission will

² *Ibid.*, para. 17.

³ *Id.*, para. 28.

⁴ *Id.*, para. 3.

need to address several policy issues, concurrent with its regulatory framework decision, so that customers served by rural ILECs can continue to receive affordable broadband Internet access service. These issues include the continued need for an effective pooling mechanism; the Commission's future ability to include broadband Internet access service in the universal service definition; the allocation of joint and common costs; the role of states; and the ability of small, rural carriers to make a business case for deployment.

a. The Commission must preserve a pooling option for rural ILECs' DSL-based service in the event that wireline broadband Internet access service is reclassified

As OPASTCO noted in its reply comments in the Incumbent LEC Broadband Notice,⁵ the economic and market conditions experienced by small ILECs vary widely, and regulatory requirements and classifications that might impede the efforts of some rural carriers to provide advanced services might prove beneficial to others. This mixed result occurs in the case of tariffing advanced services, specifically those delivered via digital subscriber line (DSL) technology.

Many rural carriers participate in revenue pools administered by the National Exchange Carrier Association (NECA), which files tariffs that are charged by all pool participants. Pooling involves risk sharing and the matching of revenues to costs. It allows participants to reduce the volatility of their individual company revenues by dissipating those risks across numerous carriers. It is important to note that for many small ILECs, deployment of advanced services would not be viable without pooling.

⁵ OPASTCO reply comments, CC Docket No. 01-337, FCC 01-360 (fil. April 22, 2002), pp. 2-5.

Investment in DSL-capable infrastructure is risky for rural carriers because of low population density⁶ and other factors (such as lack of economies of scale, remote locations that make backbone access more expensive, etc.) that make service more costly to provision in these markets. Many small ILECs deployed DSL with no reason to believe that pooling might be discontinued in the foreseeable future. Pooling remains necessary in order for them to recover the considerable costs of deployment and continue providing the service.

Rural ILECs that have deployed advanced services did so according to the rules in force at the time, and alterations to the regulatory framework for wireline broadband Internet access service will have ramifications. If alterations lead to a sudden elimination of DSL-based service from the NECA pools, numerous rural ILECs could be forced to significantly increase the rates they charge consumers. This might cause some consumers of small ILECs to stop utilizing DSL-based advanced service offerings that they currently enjoy. It could also leave these carriers with significant stranded investment and financial losses. Further, pooling carriers would find it far more difficult, and in many cases impossible, to expand DSL-based services to consumers who are located further from the central office. All of these factors would severely discourage additional rural carriers from deploying or expanding advanced service offerings. Obviously, these

⁶ See, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Third Report, 17 FCC Rcd 2844, 2861, FCC 02-33 (rel. Feb. 6, 2002) (Third Report), para. 35: “[H]igh population density has a strong positive correlation with the presence of high-speed subscribership and low population density has a strong negative correlation.”

outcomes would be antithetical to the Commission's goal of encouraging the ubiquitous availability of advanced services to all Americans.⁷

Therefore, in the event that changes in the regulatory framework for wireline broadband Internet access lead to the phase-out or elimination of tariffing, provisions must be made for some kind of effective pooling mechanism. Any new mechanism must be crafted so as to ensure that the pool is sufficient enough to allow the carriers that utilize it to continue providing advanced services to consumers at reasonable rates. Regulatory changes that do not accommodate such a mechanism will thwart the ability of many small ILECs to offer advanced services to their customers, contrary to the goals of the Commission and of Congress. If the Commission finds it absolutely necessary to eliminate small ILECs' pooling option, the Commission must at the very least provide a sufficient transition period which would allow small ILECs a chance to mitigate consumer rate shock and recover a portion of their costs. A "one size fits all" regulatory approach would ignore the significantly different impacts different carriers – and therefore, consumers – may encounter as a result of reclassification.

b. The Commission must not relinquish its authority to support broadband Internet access through universal service mechanisms, in the event such support becomes appropriate in the future

Through the implementation of Section 254 of the Telecommunications Act of 1996 (the Act, 1996 Act), Congress expressed its intention for consumers in all regions of the Nation, including those in rural, insular, and high-cost areas, to have access to both

⁷ See, fn. 4.
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advanced telecommunications and information services that are reasonably comparable to those available in urban areas, and at reasonably comparable rates.⁸ At present, advanced services are not included in the universal service definition. However, the Commission and Joint Board may determine at some point in the future that broadband Internet access service should be among the services eligible for universal service support.

Section 251(c)(1) of the 1996 Act states that universal service is “an evolving level of telecommunications services,” which must “take into account advances in telecommunications and information technologies and services.”⁹ However, if wireline broadband Internet access is reclassified as an information service, a narrow reading of Section 251(c)(1) may exclude even the possibility of this service from ever receiving universal support at some time in the future. The Commission should guard against this possibility, which is clearly counter to Congressional intent when Sections 254 and 706 are read in their entirety. Therefore, if the Commission makes the proposed change in regulatory classification, it should concurrently adopt a broad interpretation of Section 254, preserving its ability to authorize support for “access to... advanced telecommunications and information services” where necessary. Section 706 provides an additional avenue for this approach, as it directs the Commission to use “other regulating methods that remove barriers to infrastructure investment,” conferring upon the Commission the authority to arrange for support of information services when conditions

⁸ 47 U.S.C. §254(b)(2),(3).

⁹ 47 U.S.C. §254(c)(1).

warrant. The very purpose of the 1996 Act¹⁰ demands that the Commission retain its ability to make universal service support available for broadband Internet access in the event it becomes appropriate to do so.

c. Regardless of the classification of wireline broadband Internet access, the Commission should continue to permit all loop-related costs to be allocated entirely to voice telecommunications services

In the event wireline broadband Internet access service is considered an information service, the Commission asks how joint and common costs of facilities used to provide both those services and telecommunications services should be allocated under the rules.¹¹ In its 1999 Line Sharing Order, the Commission acknowledged that “incumbent LECs currently attribute little or no loop costs to [DSL] services”¹² and found “it reasonable to presume that the costs attributed by LECs in the interstate tariff filings to the high-frequency portion of the loop cover the incremental costs of providing DSL on a loop already in use for voice service.”¹³ The Commission appeared perfectly comfortable with this “incremental cost” approach to joint and common cost allocation, so long as the same approach is used for the rates ILECs establish for CLECs’ access to

¹⁰ The 1996 Act was enacted, in part, to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans...” (Preamble to the Conference Report on the Telecommunications Act of 1996, 104th Congress, 2nd Session, Report 104-458, Jan. 31, 1996, p. 1).

¹¹ NPRM, para. 63.

¹² *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912, 20973, para. 133 (1999) (Line Sharing Order).

¹³ *Id.*, 14 FCC Rcd 20976, para. 140.

the high frequency portion of the shared local loop.¹⁴ If the Commission decides to reclassify wireline broadband Internet access service, it would in no way alter the underlying fact that there is little to no incremental loop cost that is incurred in the provision of DSL on a loop¹⁵ that is already providing dial tone services. Thus, there is no cost justification for the Commission to alter its present policy regarding the allocation of these costs should it reclassify wireline broadband Internet access.

More importantly, continuing to permit the allocation of all loop-related costs to ILECs' voice services is consistent with both Congressional and FCC goals regarding the deployment and provision of advanced services in rural areas. As the Commission well knows, many small, rural ILECs have prohibitively high loop costs. Requiring rural ILECs to allocate any of their loop-related costs to broadband Internet access would make the service unattractive and/or unaffordable to virtually all high-cost rural subscribers, and eliminate any incentive that these carriers presently have to deploy and offer advanced services.

Clearly, such a cost allocation policy would present a serious roadblock to achieving Congress' universal service principle of access to advanced telecommunications and information services in rural and high-cost areas that are comparable to the services provided in urban areas and at reasonably comparable rates.¹⁶ It would also be at odds with the Commission's "primary policy goal to encourage the

¹⁴ *Id.*, 14 FCC Rcd 20975, para. 139.

¹⁵ This, of course, assumes that the loop "prequalifies" for the provision of DSL services.

¹⁶ 47 U.S.C. §254(b)(3).

ubiquitous availability of broadband to all Americans.”¹⁷ Section 706 of the 1996 Act directs the Commission to encourage the deployment of advanced telecommunications capability to all Americans through, *inter alia*, “other regulating methods that remove barriers to infrastructure investment.” By continuing to permit ILECs to allocate all of their loop-related costs to their dial tone voice services – regardless of any change in the classification of wireline broadband Internet access – the Commission would be acting in accordance with this directive.

d. If the Commission classifies wireline broadband Internet access as an “information service,” any deregulatory benefits should not be offset by new regulations from states

The NPRM seeks general comments on the role of states regarding wireline broadband Internet access, should the Commission reclassify it as an “information service.”¹⁸ There is a reasonable likelihood that wireline broadband Internet access providers in certain markets will be able to serve customers more effectively under the “information services” classification. However, many of the benefits of a reduced federal regulatory regime may be at risk if other regulatory bodies simply substitute their own regulations. There is potential for states to impose regulation on wireline broadband Internet access providers, while declining to do so for providers using cable, wireless, satellite, or other technology platforms. State regulation of wireline broadband Internet access service provided by rural LECs, however well-intentioned, may impose additional

¹⁷ NPRM, para. 3.

¹⁸ NPRM, para. 62.

burdens on carriers operating in the most costly markets.¹⁹ It could also, inadvertently or otherwise, lead to technological “winners” and “losers.”

OPASTCO notes that the Commission has previously determined that Internet access service is predominately interstate in nature.²⁰ Differing regulations among states of wireline broadband services could result in further regulatory uncertainty, thwarting the Commission’s goal of ubiquitous availability. OPASTCO respects the important role states play in advancing the availability of new services to consumers. However, given the interstate nature of broadband services, state regulations should be avoided. Therefore, the Commission should utilize its preemption authority in order to prevent differing regulations at the state level from impeding deployment of advanced services.

e. Access to reasonably priced content can help rural carriers establish a viable business case for advanced services deployment

As the Commission continues to monitor the deployment of advanced services as required by Section 706 of the Act, it must consider what measures might strengthen the economic viability of wireline deployment. Even when rural carriers are able to

¹⁹ Notably, California has already claimed jurisdiction over DSL-based services. *See*, Public Utilities Commission of the State of California, *California ISP Association, Inc., v. Pacific Bell Telephone Company (U-1001-C)*; *SBC Advanced Solutions, Inc. (U-6346-C) and Does 1-20*, Case 01-07-027, Assigned Commissioner’s and Administrative Law Judge’s Ruling Denying Defendant’s Motion to Dismiss (Mar. 28, 2002).

²⁰ *See, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, para. 52 (2001): “The Commission has held and the Eighth Circuit has recently concurred, that traffic bound for information service providers (including Internet access traffic) often has an interstate component.” The Commission also held that these costs are “largely interstate” in its reciprocal compensation decision. *See, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689, 3702, paras. 18-20 (1999).

overcome the cost-related obstacles they typically face and deploy broadband, many consumers choose not to subscribe. As Chairman Powell has remarked, demand is not keeping pace with availability.²¹ These low “take rates” constitute an additional obstacle to widespread deployment of wireline advanced services.

While the advanced services market remains in a nascent stage of development, there are early indications that consumer take rates do increase when video content is included among the broadband services made available to consumers. Yet it is difficult and expensive for many small providers to obtain such content at reasonable rates that consumers can afford.²² The Commission should examine what measures it might take, or refrain from taking, to encourage the delivery of video content by rural carriers as part of the Commission’s overall broadband deployment strategy.

III. IN ORDER TO ENSURE THE CONTINUED STABILITY AND SUFFICIENCY OF THE UNIVERSAL SERVICE FUND, THE COMMISSION MUST EXERCISE ITS AUTHORITY TO REQUIRE ALL FACILITIES-BASED BROADBAND INTERNET ACCESS PROVIDERS TO CONTRIBUTE EQUITABLY

The Commission seeks comment on whether, and to what extent, facilities-based broadband Internet access providers should contribute to universal service, particularly as

²¹ “Combined, broadband availability is estimated to be this year almost 85%. The intriguing statistic is that though this many households have availability, only 12% of these households have chosen to subscribe.” *Remarks of Michael K. Powell, Chairman, Federal Communications Commission, At the National Summit on Broadband Deployment*, Washington, D.C. (Oct. 25, 2001) (<http://www.fcc.gov/Speeches/Powell/2001/spmcp110.html>).

²² See, OPASTCO comments, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, CS Docket No. 01-290, FCC 01-301 (fil. Jan. 7, 2002).

traditional telecommunications services migrate to broadband platforms.²³ Several factors support requiring every facilities-based broadband Internet access provider, whatever platform it uses, to contribute equitably to the fund. To begin with, the 1996 Act permits the Commission to require contributions from non-carrier providers of “telecommunications,” regardless of exactly how it ultimately classifies broadband access to the Internet over wireline facilities and other platforms. Furthermore, such contributions are essential to maintaining the stability and sufficiency of the fund for the long term. Finally, contributions from all broadband Internet access providers “on an equitable and nondiscriminatory basis”²⁴ is consistent with – and, indeed compelled by – the Commission’s principle of competitive and technological neutrality.

a. The Commission has the permissive authority to require facilities-based broadband Internet access providers over all platforms to contribute to the universal service fund

Section 254(d) of the 1996 Act states, in part, that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute” to universal service, and that “[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.” In its 1998 Report to Congress, the Commission expressly recognized that, “facilities-based ISPs that provide no stand alone telecommunications services could be required to contribute to universal service under its permissive

²³ NPRM, para. 66.

²⁴ 47 U.S.C. §254(d).

authority.”²⁵ Indeed, “to the extent that any of [an ISP’s] underlying inputs constitute[s] interstate telecommunications, [the Commission has] the authority under the 1996 Act to require that the providers of those inputs contribute to federal universal service mechanisms.”²⁶ The Report to Congress goes on to state that:

“[i]n those cases where an ISP owns transmission facilities, and engages in data transport over those facilities in order to provide an information service ... [o]ne could argue that in such a case the ISP is furnishing raw transmission capacity to itself. To the extent this means the ISP is providing telecommunications as a non-common carrier, it would not generally be subject to Title II, but it may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”²⁷

All broadband Internet access providers who use their own transmission facilities to engage in data transport – regardless of the platform they employ – also provide telecommunications to themselves. For example, the Commission noted in its Cable Modem Order, that the provision of cable modem service is accomplished “via telecommunications.”²⁸ Consequently, the Commission has ample authority under Section 254(d) to require facilities-based broadband Internet access providers over all platforms to contribute, regardless of their ultimate classification.

²⁵ NPRM, para. 74. *See also, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11534-11535, para. 69 (Report to Congress).

²⁶ Report to Congress, 13 FCC Rcd 11532-11533, para. 66.

²⁷ *Id.*, 13 FCC Rcd 11534, para. 69.

²⁸ *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, *Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77 (rel. March 15, 2002), para. 39 (Cable Modem Order).

b. The public interest requires that the Commission exercise its permissive authority over all facilities-based broadband Internet access providers

As the telecommunications marketplace evolves, it is essential that the Commission “make sure that [its] interpretation of the statute, to the extent legally possible, will continue to sustain universal service in the future.”²⁹ In order to accomplish this essential goal, the Commission must take steps to ensure both the stability of the contribution base and the sufficiency of the fund. This is particularly important in light of recent trends within the marketplace for interstate telecommunications.

In the separate but “intertwined” Universal Service Contribution Methodology Further Notice of Proposed Rulemaking, the Commission notes that overall end-user switched interstate telecommunications revenues, which make up the contribution base, are now on the decline.³⁰ This is primarily due, no doubt, to the decline in interexchange carriers’ (IXCs) interstate revenues, whose contributions presently account for more than half of all universal service funding.³¹ Nevertheless, while the contribution base and IXC interstate revenues may be dropping, overall demand for interstate telecommunications and information services has probably never been greater. The demand is simply shifting to service packages and service providers in which either the precise portion of revenues

²⁹ Report to Congress, 13 FCC Rcd 11548-11549, para. 98.

³⁰ *Federal-State Joint Board on Universal Service, et. al.*, CC Docket No. 96-45, *et. al.*, Further Notice of Proposed Rulemaking, FCC 02-43 (rel. February 26, 2002), para. 8 (Universal Service Contribution Methodology FNPRM).

³¹ *Id.*, para. 7.

attributable to interstate telecommunications cannot easily be identified (*e.g.*, mobile wireless carriers' bundled toll and local packages) or the service provider is not presently required to contribute to universal service.

The gradual but ever-growing use of broadband platforms and Internet Protocol (IP) networks plays a significant role in the present instability of the contribution base. Consumers use IP networks in a variety of ways (*e.g.*, access to the World Wide Web, e-mail, instant messaging, Internet telephony) and via various broadband platforms (*e.g.*, wireless, cable, satellite) to substitute for interstate calls on the public switched network.³² For example, individuals can now access the World Wide Web to make airline, car rental, hotel, and other travel reservations, when previously they would have to make telephone calls to accomplish each of these tasks. People can also transact mail-order purchases of books, clothing, electronics, and recorded music by utilizing the web, rather than by contacting these same vendors via traditional voice service. Families and friends can now utilize e-mail messages, rather than long-distance calls, to keep in touch with each other. School-age children first popularized the use of instant messaging, or "IM" services, to communicate with friends for hours at a time without using the telephone. Many businesses, especially those with offices, contractors, or clients in far-flung locations (often other states or countries), have emulated this behavior, adopting IM

³² A joint industry study prepared by J.P. Morgan H&Q and McKinsey & Company predicts that, by 2005, over 80 percent of all U.S. long-haul (interstate) traffic will consist of IP traffic, as compared to only 7 percent for long distance voice traffic. In comparison, in 1999, IP traffic represented just 18 percent of total long-haul traffic while long distance voice made up 50 percent. *See, IP! – Summary: How Changes in the Internet are Disrupting the Telecom Services Industry*, JPMorgan H&Q and McKinsey & Company, May 11, 2001, pp. 16-17.

themselves. Some IM services are developing increasingly sophisticated voice components, progressively taking on more characteristics of traditional voice services. The examples of “Internet substitution” abound, and continue to increase. This shift away from traditional interstate telecommunications services has begun to “drain” the support base for universal service.³³

Current market data demonstrates significant growth in the provision of broadband Internet access services by facilities-based providers that do not presently contribute to universal service. For example, the Commission’s Third Report on the deployment of advanced telecommunications capability states that “cable companies report almost 5.2 million high-speed lines in service using cable modem technology at the end of June 2001, compared to 1.4 million at the end of 1999.”³⁴ This is an approximately 270 percent increase in cable modem lines in service for this period.

Moreover, studies indicate that subscribership to these broadband Internet access services will continue to skyrocket, which will seriously threaten the viability of the universal service fund, regardless of the contribution methodology that is adopted.³⁵ One study estimates that cable modem subscriptions “will continue to increase dramatically,

³³ See, Report to Congress, 13 FCC Rcd 11548-11549, para. 98.

³⁴ Third Report, 17 FCC Rcd 2864, para. 44. The statistics also show that carriers delivering broadband via terrestrial fixed wireless or satellite platforms each comprise approximately 50,000 to 150,000 high-speed lines individually (*Id.*, 17 FCC Rcd 2867, 2869, paras. 55, 60). These broadband providers are also not presently required to contribute to universal service.

³⁵ For example, a recent analysis of the universal service system, conducted by the General Accounting Office (GAO), concluded that “IP telephony may not be an immediate threat to federal funding of universal service but may threaten its long-term viability.” See, *Federal and State Universal Service Programs and Challenges to Funding*, Report to the Ranking Minority Member, Subcommittee on Telecommunications

reaching an estimated 28-30 million by 2006.”³⁶ With such a rapid deployment rate, it comes as no surprise that in the near future, “more than 50% of all broadband customers will get onto the Internet through a cable modem.”³⁷

In light of these projections, broadening the base of contributors to include all facilities-based broadband Internet access providers would serve the public interest by ensuring a sustainable contribution base for the long term as the telecommunications marketplace continues to evolve. This, in turn, helps to ensure that all Americans continue to have affordable access to quality telecommunications and information services, as Section 254 requires.

Furthermore, when some telecommunications providers are not required to contribute to universal service, the burden on those who are required to contribute is obviously greater. Spreading support obligations as widely as possible reduces each company’s contribution, which, in turn, reduces the level of universal service “fees” that each carrier is required to pass onto consumers. Thus, regardless of the outcome of the Universal Service Contribution Methodology proceeding, all facilities-based broadband Internet access providers should be added to the list of contributors.³⁸

and the Internet, Committee on Energy and Commerce, House of Representatives, General Accounting Office (rel. February 2002), pp. 21-23.

³⁶ Third Report, 17 FCC Rcd 2872, para. 66 (citing Richard Bilotti, Benjamin Swinburne, and Megan Lynch, *Broadband Cable Television, The Past is Prologue to the Future...*, Morgan Stanley Equity Research, Oct. 4, 2001, at 28-30).

³⁷ Mike Goodman, *Residential Broadband – Provisioning Cable Modem Service*, Yankee Group Reports, October 18, 2001, Executive Summary. See also, Jane Black, *Beware, Baby Bells*, Business Week, August 21, 2001.

³⁸ Certainly, it would be irresponsible and illogical to make any changes to the contribution assessment methodology without first or concurrently including all facilities-based broadband Internet access providers

c. Equitable universal service contributions from all facilities-based broadband Internet access providers are necessary to comply with Section 254(d) and the Commission’s principle of competitive and technological neutrality

A requirement that facilities-based broadband Internet access providers over all platforms contribute equitably to universal service is necessary to comply with the nondiscrimination requirement of Section 254(d), as well as the Commission’s own principle of competitive and technological neutrality.³⁹ It is neither equitable, nondiscriminatory, nor competitively neutral to require only wireline telecommunications carriers to contribute on the basis of revenues earned from broadband transmission service while exempting all other broadband providers and platforms from the obligation. The Commission has stated that, “in order to promote equity and efficiency, we should avoid creating regulatory distinctions based purely on technology.”⁴⁰ As broadband usage grows, so too does the inequity of the present system.

The disparate treatment of broadband Internet access service providers vis-à-vis their universal service obligations also creates opportunities for regulatory arbitrage. Broadband Internet access providers that are exempt from contributing to universal service have a competitive advantage over those who are required to contribute, as they do not need to recover any support payments from their end users.⁴¹ It is anomalous that

as contributors. See, NRTA and OPASTCO Comments, *Federal-State Joint Board on Universal Service, et. al.*, CC Docket no. 96-45, *et.al.* (fil. April 22, 2002), pp. 12-19.

³⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801-8802, paras. 47-48 (1997).

⁴⁰ See, Report to Congress, 13 FCC Rcd 11548-11549, para. 98.

⁴¹ See, GAO Report, p. 22, fn. 31: “IP telephony calls, which do not include universal service charges [which, for large companies average between 8 to 12 percent of the total telephone bill] can mean a savings

cable companies providing cable modem service, now the market leaders in the provision of broadband services,⁴² are exempt from contributing to universal service, while telecommunications carriers providing DSL service are subject to USF assessments. Indeed, if a flat-fee assessment methodology is adopted without including all facilities-based broadband Internet access providers, the DSL competitive inequity will grow still greater.

Customers should not be driven to one broadband Internet access provider or platform over another based on the Commission's universal service contribution policy. Rather, subscribers should select a provider based on its services, quality, and prices. Federally mandated support obligations simply should not be a factor within a competitive marketplace. Therefore, as interstate telecommunications traffic rapidly migrates to highly competitive Internet platforms, it is essential for the Commission to adhere to the 1996 Act's requirement for equitable and nondiscriminatory contributions by requiring all broadband Internet access providers to contribute to universal service.

IV. CONCLUSION

OPASTCO appreciates the Commission's efforts to achieve a minimal regulatory environment for broadband services. As it moves towards this worthy objective,

of around 10 percent on corporate telephone bills. This savings ... may make IP networks attractive to large business end users." *See also*, Report to Congress, 13 FCC Rcd 11501, 11548-11549, para. 98. "If such providers are exempt from universal service contribution requirements, users and carriers will have an incentive to modify networks to shift traffic to Internet protocol and thereby avoid paying into the universal service fund or, in the near term, the universal service contributions embedded in interstate access charges."

⁴² In June 2001, there were a total of 3.8 million high-speed lines in service utilizing DSL technology, as

OPASTCO urges the Commission to avoid “one size fits all” approaches with regard to any changes made to the legal and policy framework for wireline broadband Internet access service. To begin with, the Commission must preserve the ability of rural ILECs to utilize a pooling mechanism, which is vital to many carriers’ ability to deliver broadband Internet access service to their rural customers. The Commission must also ensure that its ability to include broadband Internet access service in the universal service definition is not diluted. In addition, all loop related costs should continue to be allocated to voice telecommunications service, regardless of any change in regulatory classification, as it is essential to keeping the rates for advanced services within the reach of high-cost rural consumers. The Commission is also reminded that a reduction in federal regulations will generate few benefits if they are simply replaced with state-imposed burdens. Access to reasonably priced content can help rural carriers establish a viable business case for deployment, which can be difficult to attain in many rural markets. Finally, the Commission must broaden the base of universal service contributors to include broadband Internet access providers over all platforms in order to maintain a sufficient, stable, and competitively neutral universal service support mechanism for the long term.

compared to 5.2 million lines utilizing cable modem technology. Third Report, 17 FCC Rcd 2864-2867 paras. 44, 49, and 52.

Respectfully submitted,

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